

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4730 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 - No

KAUSHIK K DESAI

Versus

STATE OF GUJARAT

Appearance:

MS REKHA B MAHARAJA for Petitioner
MR VM PANCHOLI, AGP instructed by M/S MG
DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/08/1999

ORAL JUDGEMENT

At the outset, it must be noted that Ms Rekha B Maharaja, learned advocate who was earlier appearing for the petitioner, had filed the note dated 24.4.1998 requesting for withdrawal of her appearance on the ground that the petitioner had taken away the case papers from her with a view to engage another advocate. It was also mentioned in the note that since learned advocate Ms

Rekha Maharaja did not have the present address of the petitioner she was unable to intimate the petitioner regarding the withdrawal of her appearance. When the note came up for orders before this Court (Coram : Mr Justice R.A. Mehta) on 28.4.1998, the following order was passed :-

"No order as the consent of the petitioner is not produced."

2. The matter has again come up on the board today for final hearing. The petitioner does not seem to have engaged another advocate to argue this matter and the name of Ms Rekha Maharaja is still shown in the cause list. In view of the facts stated in the aforesaid note dated 24.4.1998 of Ms Rekha Maharaja and in view of the fact that the address mentioned in the petition is only the office address of the petitioner (Office of the Executive Engineer, City R & B Division, Lal Darwaja, Ahmedabad) from which office the petitioner's services were already terminated, the Court has no alternative but to proceed with the hearing of the petition in absence of the petitioner or his advocate.

3. Mr Pancholi, learned AGP for the respondents states that the petitioner's appointment to the post of Assistant Engineer was on purely and ad-hoc basis till availability of GPSC selected candidates. Condition No. 4 of the petitioner's appointment order dated 12.3.1985 (Annexure "C") makes the point absolutely clear. It is mentioned in the impugned order dated 4.9.1986 (Annexure "D") that since the GPSC selected candidates were available, the services of the petitioner and similarly situate other Assistant Engineers were required to be terminated. Mr Pancholi, therefore, submits that the impugned order dated 4.9.1986 at Annexure "D" to the petition was perfectly legal and valid. The submission is certainly valid.

4. The petitioner has, however, raised one contention in the memo of the petition that earlier the petitioner was holding lower post of Work Supervisor under the Superintending Engineer, Ahmedabad City R&B Circle, Ahmedabad. The said appointment was made in January, 1981 and the petitioner continued as such till the petitioner came to be appointed as an Assistant Engineer by the order dated 12.3.1985 (Annexure "C"). Hence, even if the petitioner's services were not required on the post of Assistant Engineer on account of availability of the GPSC selected candidates, the petitioner was required to be posted on the lower post as

Work Supervisor (Additional Assistant Engineer). Affidavit in reply does not satisfactorily deal with the said contention. All that is submitted in para 6 of the reply affidavit is that if the petitioner's services are terminated in accordance with the stipulation in the appointment order in the post of Assistant Engineer, he cannot make a grievance thereof nor he can claim that he should be given the earlier post already held by him.

5. In the above view of the matter, if the petitioner approaches the respondents for being taken back on the lower post of Additional Assistant Engineer within three months from today the respondents shall consider the petitioner's application and give him suitable posting on the lower post.

6. Subject to the aforesaid direction, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-

August 6, 1999 (M.S. Shah, J.)

sundar/-